(3)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

WRIT PETITION NO.2647/2002.

PETITIONER : GOPAL CHAND MAHAPATRO
Aged about 57 years,
S/o Shri Baluki Mahapatro,
R/o House No.102, Ward No.36
Near Mandi Chowk, Torwa
Bridge Road, Torwa.
Tehsil and Distt., Bilaspur (C.G.).

VERSUS

RESPONDENT(S) : GANESH PRASAD DEWANGAN
Aged about 64 years,
S/o Late Sri Babulal Dewangan
R/o Dewangan Mohalla, Kilaward,
Juna, Bilaspur, Distt., Bilaspur
Chhattisgarh.

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE, ORDER (S) OR DIRECTION (S):

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# आदेश पत्रक

मामला क्रमांक W.P.No 2647/02 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**26/03/2004**

**Shri J.A. Lohani, counsel for the petitioner.**

**Shri Praful Bharat, counsel for the respondent.**

**Petitioner who is a tenant of respondent has preferred this writ petition under Article 227 of the Constitution of India, being aggrieved by the order dated 03/05/2001 passed by 8th Civil Judge, Class-I, Bilaspur, in Civil Suit No. 12/A/99 whereby the defence of the petitioner has been struck out under Section 13 (6) of the Chhattisgarh Accommodation and Control Act, 1961.**

**Brief facts leading to filing of this writ petition are that the petitioner herein took the disputed premises on rent from Babulal Dewangan, the father of the respondent and after the death of Babulal Dewangaon, the respondent became the land lord of the disputed premises which is admitted position. The respondent herein filed a civil suit in the Court of Additional Civil Judge, Class-I, Bilaspur, mentioned above for eviction of the petitioner on the ground of bona fide requirement. However, during the pendency of that suit, the respondent moved an application for striking out of the defence, in reply of which the petitioner herein said that the brother of the respondent herein – Radheshyam Dewangan used to collect the rent and since he stopped collecting the rent in the month of November, 1998, he started depositing that rent before the Rent Controlling Authority, Bilaspur.**

**The learned Civil Judge considering the defence taken by the petitioner herein vide order dated 26/06/2000 passed an order considering the reply of the petitioner that he should deposit the rent within a period of**

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one month and fixed the next date of hearing on 26/07/2000. A perusal of this order reveals that Radheshyam Dewangan appeared before the Rent Controlling Authority on 12/01/2000 in response to the notice issued by the Rent Controlling Authority in the proceedings in which the petitioner herein deposited the rent and submitted his reply that he is not the landlord of the petitioner and in fact his brother Ganesh Prasad Devangan, the respondent herein is the landlord. In spite of knowing this fact the petitioner did not deposit the rent in the Court of Rent Controlling Authority in the name of the respondent and neither he paid nor offered the rent to the respondent herein and ultimately he deposited the rent of Rs.400/- on 10/11/2000 in the name of respondent and again he deposited the rent of Rs.400/- on 13/11/2000. But as per the orders of the learned Civil Judge, the petitioner had not deposited the rent in that Court. However, on 26/07/2000 he moved an application before the Civil Judge that time may be granted to him so that he can withdraw the amount from the Rent Controlling Authority and deposit the rent in the Civil Court. In the meantime, an application under Section 151 of the Code of Civil Procedure, was filed by the respondent herein for striking out of the defence of the petitioner for not depositing the rent which came to be decided by the learned Civil Judge by the impugned order and in the last paragraph of the order it has been mentioned that since the petitioner is not depositing the rent since 1996, the defence should be struck out and the Court struck out the defence on the ground that in compliance of the Court's order the tenant has not deposited the rent.

[पीछे देखिये

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..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -3- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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I have heard learned counsel for the parties.

Learned counsel for the petitioner argued that on 26/07/2000 itself the petitioner moved an application under Section 151 of the C.P.C., for extension of time so that he can withdraw the amount from the Rent Controlling Authority and deposit the amount in the Court. But without passing any order on this application, the learned lower Court has struck out of the defence of the petitioner. A perusal of the impugned order reveals that no request was made by the counsel for the petitioner herein that before deciding the application of the respondent for striking out the defence of the petitioner application for extension of time be decided and no time was extended by the learned Civil Judge. Moreover, the amount which was deposited before the Rent Controlling Authority, was not more than Rs.1000/- and that was not such a huge amount which the petitioner could not have deposited in the Court of Civil Judge in compliance of the Court's order dated 26/06/2000 without withdrawing the amount from the Court of the Rent Controlling Authority. Therefore, in the first instance, neither a request was made by the counsel for the petitioner before the Court at the time of the passing of the impugned order nor the amount was deposited by the petitioner in compliance of the Court's order dated 26/06/2000, even when the petitioner came to know on 12/01/2000 that the actual landlord is Ganesh Prasad Dewangan, not Radheshyam Dewangan, even then till the month of November, 2000, he had not deposited the rent, even after the order of the Civil Judge dated 26.6.2000. All this shows that the petitioner was never sincere to deposit

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the rent. Therefore, the trial Court has rightly struck out of the defence of the petitioner.

In view of the circumstances mentioned above, I am of the opinion that there is no substance in this writ petition. The same is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge